

## **Assembly Bill No. 861**

### **CHAPTER 411**

An act to amend Section 7403 of, and to add Sections 7308 and 7396.5 to, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 22, 2006. Filed with  
Secretary of State September 22, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 861, Bass. Barbering and cosmetology: licensure.

Under existing law, the State Board of Barbering and Cosmetology licenses and regulates the practice of barbering and cosmetology. Existing law authorizes the board to deny, suspend, or revoke a license for specified reasons. Existing law requires the board in certain circumstances to provide a notice to a person that states the board's reason for denying the license, and to comply with other requirements upon denying a license to an applicant. Existing law also requires the board to conduct a hearing within 60 days of an applicant's request for a hearing.

This bill would require the board to give specified additional information to a person who has been denied a license. The bill would require the board to conduct a hearing within 90 days of receiving an applicant's request for a hearing for a license denial, and for all other hearings, would authorize the board to determine when the hearing shall be conducted. The bill would authorize the board to issue a probationary license to an applicant, subject to specified terms and conditions. The bill would also require the board to study the effects of law, regulations, and policy that may create unnecessary barriers to employing people with criminal records, and would require the board to report its findings to the Legislature on or before September 1, 2007.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 7308 is added to the Business and Professions Code, to read:

7308. (a) The board shall study the effects of current law, regulations, and policy related to the licensing functions of the board that may create unnecessary barriers to employing people with criminal records. The objective of the study shall be to identify changes in law or board policy to help remove unnecessary barriers to licensing due to criminal records while protecting the safety and security of customers and the integrity of

the occupations regulated by the board. The board shall report all of its findings to the Legislature on or before September 1, 2007.

(b) For each of the calendar years 2002, 2003, 2004, 2005, and 2006, the study shall provide the following information:

- (1) The total number of applicants, by occupation.
- (2) The number of applicants who were denied licensure.
- (3) The number of applicants, by occupation, who disclosed a criminal record on their application. Of those applicants:
  - (A) The number of applicants who were denied licensure.
  - (B) The number of applicants who were denied licensure who requested a hearing to appeal the decision.
  - (C) The number of applicants whose appeal resulted in reversal or modification of the decision, including the issuance of a probationary license.
  - (D) The age and severity of each offense.
  - (E) The number of applicants with nonviolent drug offenses.
  - (F) The number of applicants with misdemeanor offenses.
  - (G) The number of applicants that were asked by the board to supply additional information relating to their criminal record.
  - (H) The number of applicants who provided evidence of rehabilitation.
- (4) The criteria applied by the board to determine whether an applicant's criminal record is substantially related to the requested license, including the specific categories of disqualifying offenses and any criteria related to the age and severity of the disqualifying offenses.
- (5) The criteria applied by the board to determine whether an applicant has been sufficiently rehabilitated, including an analysis of the factors that most often lead to a determination of rehabilitation resulting in licensing.
- (6) The average length of time that an appeal is pending relative to the date of the hearing request and final decision.
- (7) The number and percentage of appeals pending longer than 30 days and longer than 100 days from the time the applicant requested the hearing.

SEC. 2. Section 7396.5 is added to the Business and Professions Code, to read:

7396.5. (a) The board may, in its sole discretion, issue a probationary license to an applicant subject to terms and conditions deemed appropriate by the board, including, but not limited to, the following:

- (1) Continuing medical, psychiatric, or psychological treatment.
  - (2) Ongoing participation in a specified rehabilitation program.
  - (3) Abstention from the use of alcohol or drugs.
  - (4) Compliance with all provisions of this chapter.
- (b) The board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

SEC. 3. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) The board may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denying a license to an applicant, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(d) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

(e) In any case in which the administrative law judge recommends that the board revoke, suspend or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation and adjudication of the case. For purposes of this section, "costs" include charges by the board for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges incurred by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(f) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(g) The board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(h) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(i) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a

scheduled reimbursement in the fiscal year in which the costs are actually recovered.

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